EX PARTE OR LATE FILED

ORIGINAL

WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

July 15, 1999

EX PARTE

RECEIVED
JUL 15 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CC Docket 96-98

Dear Ms. Salas:

On July 14, 1999, Robert Shanahan, David Graham, Blaine Patrick, and Scott Sawyer of New England Voice & Data, LLC, Jonathan Askin of ALTS, and I met with Jake Jennings, Chris Libertelli, Bill Sharkey, John Reel, and Claudia Fox of the Common Carrier Bureau to discuss the need to establish dark fiber as an unbundled network element. The presentation was based on the attached outline.

Sincerely,

Thomas Jones

Attachment

cc: Jake Jennings
Claudia Fox
Chris Libertelli
Bill Sharkey
John Reel

No. of Copies rec'd 0+2
List A B C D E

NEW ENGLAND VOICE & DATA, LLC

***Ex Parte* Presentation**

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (UNE Remand)

CC Docket No. 96-98

Robert Shanahan, President and Chief Operating Officer
David Graham, Senior Vice President, Network Implementation
Blaine Patrick, Senior Vice President, Engineering
Scott Sawyer, Vice President, Regulatory Affairs

Thomas Jones
Willkie Farr & Gallagher

July 14, 1999

NEVD Is Installing SONET Ring Networks In States That Have Ruled That Dark Fiber Is A UNE

- Commissions in Massachusetts, New Hampshire, and Rhode Island have ruled that dark fiber is a UNE.

- NEVD is actively installing networks in those states using unbundled dark fiber from Bell Atlantic as interoffice transport.

- The availability of unbundled dark fiber makes it economically feasible for NEVD to install Fiber Ring Networks that reach small cities and suburban areas.

- The availability of unbundled dark fiber will make it economically feasible to serve residential customers.

- The availability of unbundled dark fiber allows NEVD to enter local exchange markets quickly.

- The availability of unbundled dark fiber allows NEVD to install networks that are equal in service quality to Bell Atlantic's network.

Since There Are No Reasonable Substitutes For Dark Fiber Interoffice Transport, NEVD Will Be Impaired If Dark Fiber Is Not A UNE

- Bell Atlantic lit transport is not a reasonable substitute for dark fiber.

- Procuring fiber from non-ILEC sources is not a reasonable substitute for unbundled dark fiber.

- Installing fiber through self-provisioning is not a reasonable substitute for unbundled dark fiber.

Since There Are No Reasonable Substitutes For Dark Fiber Loops, NEVD Will Be Impaired If Dark Fiber Is Not A UNE

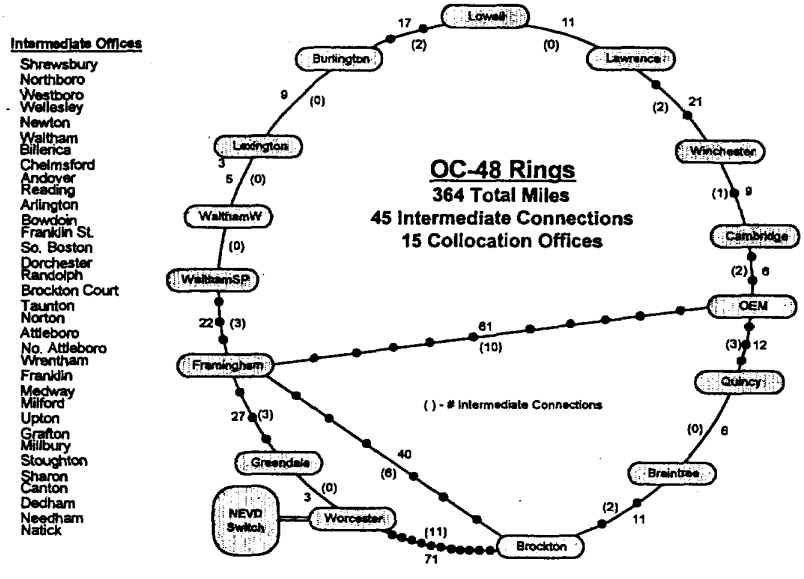
- Recently, Bell Atlantic has been deploying fiber in its local feeder plant to serve end-users.

- There are no reasonable substitutes for such unbundled dark fiber loops.

- Just like conventional two-wire and four-wire copper loops, fiber optic loops are bottleneck facilities that tend to hold the end-user hostage to the ILEC until and unless they are unbundled.

- If CLECs such as NEVD are required to build out loops to reach end-user customers, there will be no widespread competition.

NEVD's Fiber Optic Network for Commonwealth of Massachusetts Using Unbundled Dark Fiber for Interoffice Transport



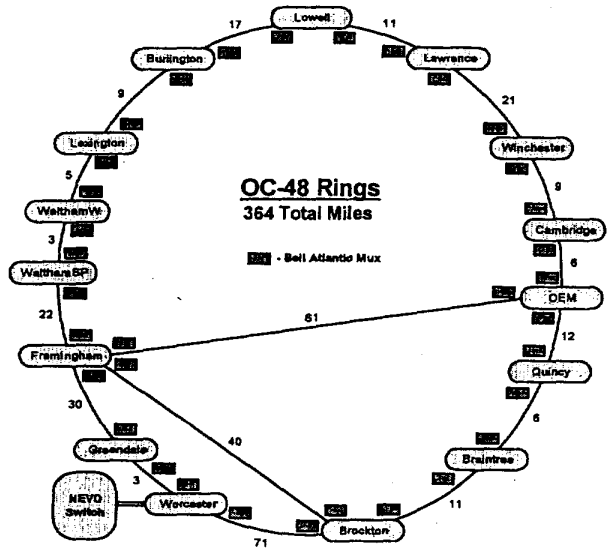
Estimated Cost of Transport Using Unbundled Dark Fiber for Interoffice Connectivity:

Non-Recurring Charge (17 Spans):	**$766.87**
Monthly Recurring Charge (17 Spans):	$406.98
Monthly Recurring Charge (364 Miles):	$47,596.64
Monthly Recurring Charge (45 Int.Conn.):	$1,773.00
Monthly Recurring Totals:	$49,776.62
Annual Recurring Charges:	**$597,319.44**

Estimated Completion Date of Network with this Option: September 1999

Service Quality: Equals Bell Atlantic standards for service quality with ring architecture, providing diversity, redundancy, and transparency.

NEVD's Fiber Optic Network for Commonwealth of Massachusetts Using Bell Atlantic Lit Fiber for Interoffice Transport



Estimated Cost of Transport Using BA Lit Fiber for Interoffice Connectivity:

Bell Atlantic tariff rate for OC-48 point-to-point transport includes a fixed charge of $11,531.11 per span and a per mile charge of $386.83. The total cost to NEVD for transport using Bell Atlantic lit fiber would be $4,588,885 annually. Compare this to the annual cost to NEVD of only $597,319.44 if dark fiber is available as an Unbundled Network Element (UNE).

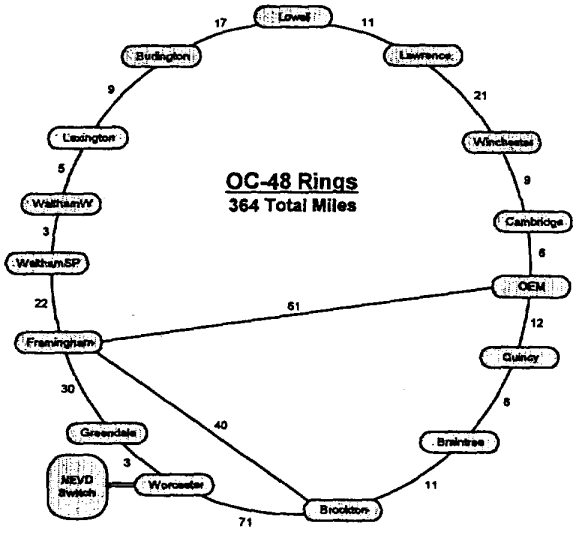
Estimated Completion Date of Network with this Option:

September 1999

Service Quality:

A 17 span network includes 34 additional OC-48 multiplex terminations to hand off the lit fiber. This represents 34 additional potential points of failure for equal bandwidth. NEVD also loses the ability to monitor and maintain its entire network.

NEVD's Fiber Optic Network for Commonwealth of Massachusetts Using 3rd Party Vendor and Self-Provisioning for Interoffice Transport



Cost of Network Using 3rd Party Vendor or Self-Provisioning:

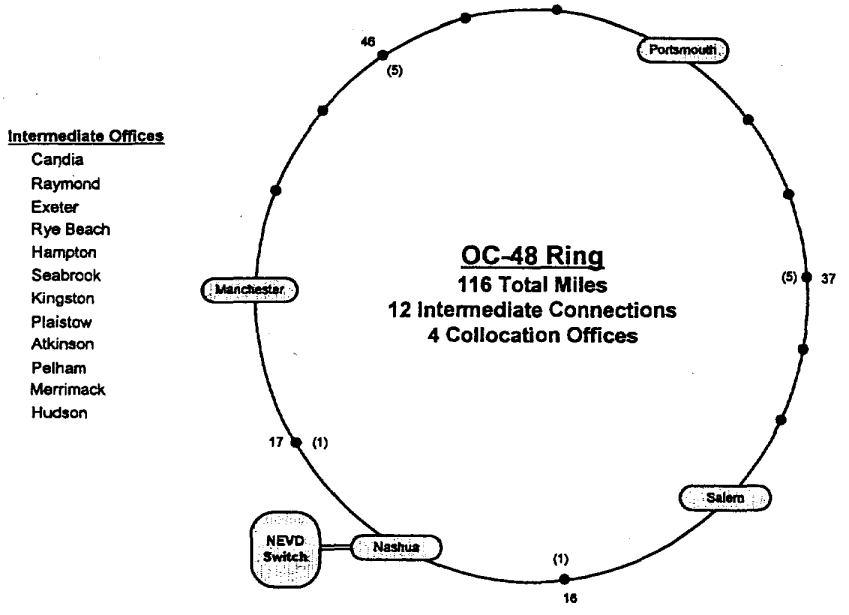
- Estimated cost of 3rd party vendor provided fiber is approximately $170 per fiber pair mile/mo. 3rd party vendor access is available in two of the above central offices, but interconnection between the two central offices does not exist.
- Assuming the availability of existing conduit and pole space, the estimated cost to NEVD of installing fiber is $46,680 per mile (96 pair fiber).
- NEVD's estimated out-of-pocket cost for installing fiber is approximately $17,000,000. If existing conduit or pole space are not available, this cost will increase exponentially.
- The estimated cost for NEVD to construct conduit and aerial plant and install fiber on this ring is $55,389,120.

Estimated Completion Date of Network: It is unlikely that NEVD would initially construct such an extensive network if it were required to self-provision.

Service Quality: Equals or exceeds Bell Atlantic standards for service quality with ring architecture providing diversity, redundancy, and transparency.

Ubiquity: 3rd party vendors do not have fiber in areas required to gain access to Bell Atlantic central offices.

NEVD's Fiber Optic Network for the State of New Hampshire Using Unbundled Dark Fiber for Interoffice Transport



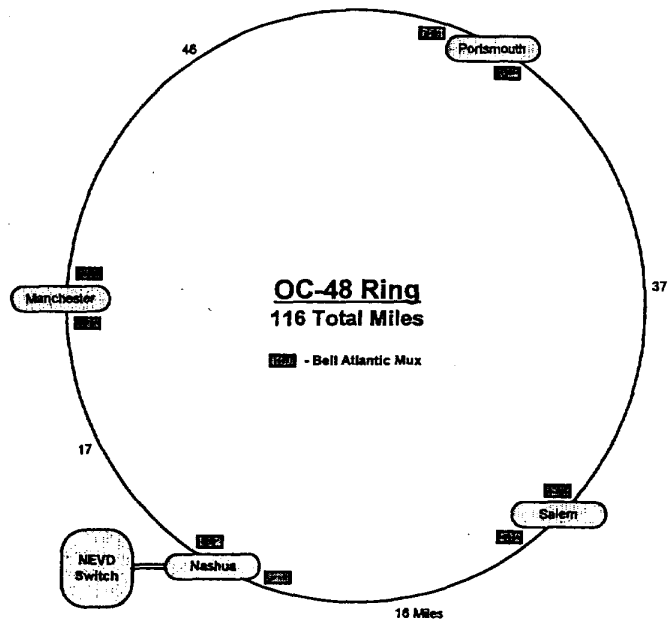
Estimated Cost of Transport Using Unbundled Dark Fiber for Interoffice Connectivity:

Non-Recurring Charge (4 Sites):	**$180.44**
Monthly Recurring Charge (4 Sites):	$95.76
Monthly Recurring Charge (116 Miles):	$15,168.16
Monthly Recurring Charge (12 Int.Conn.):	$472.80
Monthly Recurring Totals:	$15,736.72
Annual Recurring Charges:	**$188,840.64**

Estimated Completion Date of Network with this Option: September 1999

Service Quality: Equals Bell Atlantic standards for service quality with ring architecture, providing diversity, redundancy, and transparency.

NEVD's Fiber Optic Network for State of New Hampshire Using Bell Atlantic Lit Fiber for Interoffice Transport



Estimated Cost of Transport Using BA Lit Fiber for Interoffice Connectivity:

Bell Atlantic tariff rate for OC-48 point-to-point transport includes a fixed charge of $8,976.19 per span and a per mile charge of $178.75. The total annual cost to NEVD for transport using Bell Atlantic lit fiber would be $679,677.12. This is approximately three and one half times more expensive than leasing unbundled dark fiber from Bell Atlantic.

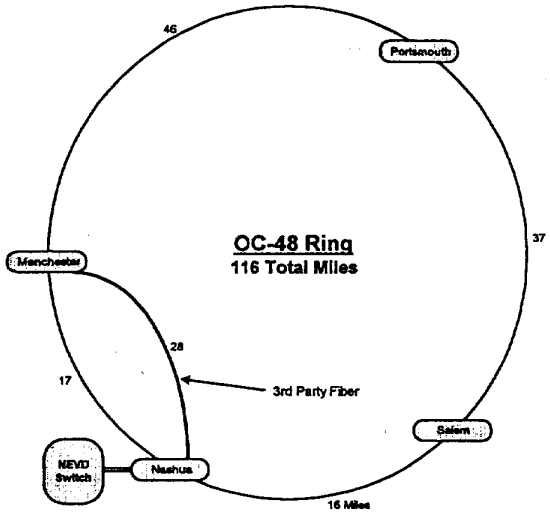
Estimated Completion Date of Network with this Option:

September 1999

Service Quality:

A 4 span network includes 8 additional OC-48 multiplex terminations required to hand off the lit fiber. This represents 8 additional potential points of failure for equal bandwidth. NEVD also loses the ability to monitor and maintain its entire network.

NEVD's Fiber Optic Network for the State of New Hampshire Using 3rd Party Vendor and Self-Provisioning for Interoffice Transport



Estimated Cost of Transport Using 3rd Party Vendor or Self-Provisioning for Interoffice Connectivity:

- 3rd party vendor fiber is available between Manchester and Nashua via a 28 mile span at a cost of $8,705.00/month. Procuring dark fiber from this vendor increases the span mileage approximately 11 miles. This is approximately 3.9 times the cost of BA unbundled dark fiber between the same central office locations.

- Assuming the availability of existing conduit and pole space, the estimated cost to NEVD of installing fiber is $45,680 per mile (96 pair fiber). NEVD's estimated out-of-pocket cost for installing fiber, where 3rd party vendor fiber is not available, is approximately $4,522,320. If existing conduit or poles are not available, this cost will increase exponentially. In addition to this one time cost, NEVD will incur $104,460 in recurring costs from 3rd party vendors.

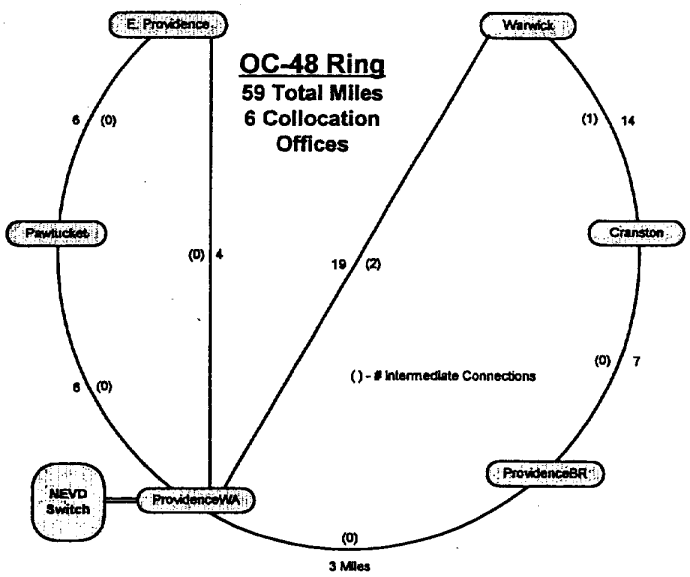
- The estimated cost for NEVD to construct conduit and aerial plant and install fiber on this ring is $9,788,080

Estimated Completion Date of Network: It is unlikely that NEVD would initially construct such an extensive network if it were required to self-provision.

Service Quality: Equals Bell Atlantic standards for service quality with ring architecture providing diversity, redundancy, and transparency.

Ubiquity: 3rd party vendors have limited access to Bell Atlantic central offices.

NEVD's Fiber Optic Network for the State of Rhode Island Using Unbundled Dark Fiber for Interoffice Transport



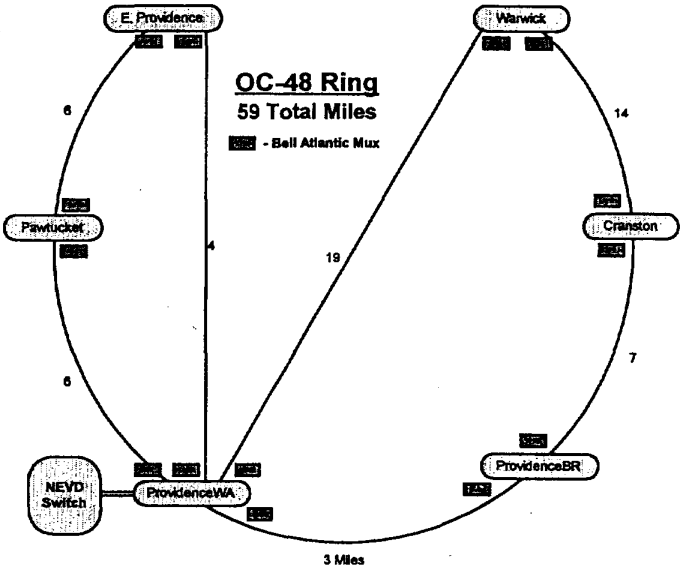
Estimated Cost of Transport Using Unbundled Dark Fiber for Interoffice Connectivity:

Non-Recurring Charge (6 Sites):	**$315.77**
Monthly Recurring Charge (6 Sites):	$167.58
Monthly Recurring Charge (59 Miles):	$7,714.84
Monthly Recurring Charge (3 Int.Conn.):	$118.20
Monthly Recurring Totals:	$8,000.62
Annual Recurring Charges:	**$96,007.44**

Estimated Completion Date of Network with this Option: September 1999

Service Quality: Equals Bell Atlantic standards for service quality with ring architecture, providing diversity, redundancy, and transparency.

NEVD's Fiber Optic Network for the State of Rhode Island Using Bell Atlantic Lit Fiber for Interoffice Transport



Estimated Cost of Transport Using BA Lit Fiber for Interoffice Connectivity:

Bell Atlantic FCC #1 tariff rate for OC-48 point-to-point transport includes a fixed charge of $1300.00 per termination mux, $500.00 per span and a per mile charge of $965.00. The total cost to NEVD for transport using Bell Atlantic lit fiber under FCC #1 would be $943,620.00 annually.

This is approximately 9.8 times more expensive than leasing unbundled dark fiber from Bell Atlantic.

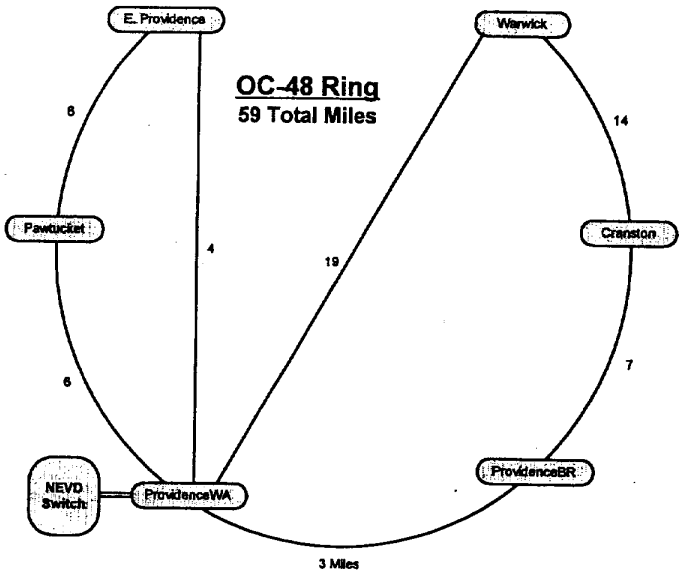
Estimated Completion Date of Network with this Option:

September 1999

Service Quality:

A 6 span network includes 12 additional OC-48 multiplex terminations required to hand off the lit fiber. This represents 12 additional potential points of failure for equal bandwidth. NEVD also loses the ability to monitor and maintain its entire network.

NEVD's Fiber Optic Network for the State of Rhode Island Using 3rd Party Vendor and Self-Provisioning for Interoffice Transport



Cost of Network Using 3rd Party Vendor or Self-Provisioning:

- Estimated cost of 3rd party vendor fiber is approximately $170 per fiber pair mile/mo. 3rd party vendor access is available in two central offices, but interconnection between the two central offices does not exist.
- Assuming the availability of existing conduit and pole space, the estimated cost for NEVD to install its own fiber is $46,680 per mile. (96 pair fiber)
- NEVD's estimated out-of-pocket cost for installing fiber would be approximately $2,754,120.00. If existing conduit or pole space are not available, this cost will increase exponentially.
- The estimated cost for NEVD to construct conduit and aerial plant and install fiber on this ring is $7,261,720

Estimated Completion Date of Network: It is unlikely that NEVD would initially construct such an extensive network if it were required to self-provision.

Service Quality: Equals Bell Atlantic standards for service quality with ring architecture providing diversity, redundancy, and transparency.

Ubiquity: 3rd party vendors do not have fiber in areas required to gain access to Bell Atlantic central offices.

NEW ENGLAND VOICE & DATA

June 2, 1999

By Facsimile and U.S. Mail

John Messenger
Counsel
Bell Atlantic
185 Franklin Street, Room 1401
Boston, MA 02110

Re: **NEVD of Massachusetts, LLC October 8, 1998 Request for Nondiscriminatory Access to Conduit in Worcester, Massachusetts**

Dear John:

This letter is to protest Bell Atlantic's failure to provide NEVD of Massachusetts, LLC ("NEVD") with commercially reasonable and nondiscriminatory access to conduit in the City of Worcester, Massachusetts. Such failure by Bell Atlantic violates the terms of our interconnection agreement and the Telecommunications Act of 1996. Bell Atlantic has unreasonably delayed and continues to delay NEVD's entry into the local exchange market in Massachusetts to the detriment of NEVD and local exchange customers.

I. NEVD's Interconnection Agreement Requires Nondiscriminatory Access to Conduit

Section 16.0 of NEVD's interconnection agreement provides as follows:

> Each Party shall provide the other Party access to its poles, ducts, rights-of-way and conduits it owns or controls, to the extent permitted by law and as required by section 224 of the Act or Department Order, on terms, conditions and prices comparable to those offered to any other entity pursuant to each Party's applicable tariffs and/or standard agreements with such entities.

Section 224 of the Act, in turn, requires Bell Atlantic to provide NEVD with "nondiscriminatory access" to conduit as follows:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

47 USC Section 224(f)(1). As will be described more fully below, Bell Atlantic is not providing NEVD with access to conduit in the same intervals as it provides such conduit to itself.

II. NEVD Requested Access To Bell Atlantic Conduit On October 8, 1998

On October 8, 1998, NEVD requested access to conduit in the following streets in the City of Worcester: Gold Street, Grove Street, Front Street, Commercial Street, Thomas Street, Harbor Street, Chester Street, High Street, Murray Street, Chandler Street. The request covered approximately 11,000 feet and was to enable NEVD to connect the switch in its central office at 90 Washington Street to Bell Atlantic's switch at 15 Chestnut Street.

Since requesting the above-described conduit, NEVD has done everything that Bell Atlantic has asked it to do. It has entered into a license agreement. It has obtained a grant of location. It has obtained the necessary permits. It has sent Bell Atlantic a check for the license agreement. It has paid Bell Atlantic to obtain a cost estimate for make-ready work. It has paid Bell Atlantic over $25,000 for make-ready work. Nevertheless, as of June 2, 1999, Bell Atlantic has still not told NEVD where conduit is available and where it is not. As a result, NEVD is not able to gain access to manholes in order to install conduit where existing conduit is not available. Nor is NEVD able to install fiber where existing conduit is available.

NEVD informed Bell Atlantic as early as January 5, 1998 that it had purchased a switch, was collocating in a number of Bell Atlantic central offices, and needed to quickly establish connectivity in order to be able to provide local exchange service in the City of Worcester and other parts of the state. Rather than cooperating with NEVD in a commercially reasonable manner, Bell Atlantic has dragged its feet. Eight months after receiving a simple request for conduit that covers only 11,000 feet, Bell Atlantic refuses to tell NEVD where conduit is available and refuses to allow NEVD to enter manholes to install fiber.

If Bell Atlantic's retail operations had requested conduit from its network services division and had informed them that it had purchased a new switch that needed to be turned up as soon as possible, NEVD is certain that conduit would have been made available well within eight months.

We intend to take this matter to the Department unless it is swiftly rectified. Please call me when you've had a chance to review this letter and have determined the action items that Bell Atlantic is ready, willing and able to execute so that we can quickly install fiber between our switches in the City of Worcester.

Sincerely,

Scott A. Sawyer

cc: Michael Isenberg, DTE
Robert Shanahan
David Graham

SAS/skm

June 14, 1999

John Messenger, Esquire
Counsel
Bell Atlantic
185 Franklin St.
Boston, MA 02110

RE: BA DELAY REGARDING NEVD'S ACCESS TO CONDUIT IN WORCESTER

Dear Mr. Messenger:

This letter is to protest Bell Atlantic's ("BA") further delay in responding to NEVD's request for access to conduit in Worcester, Massachusetts. As you know, last Tuesday at the Department of Telecommunications & Energy, BA agreed to the following action items in connection with our request:

- to arrange for BA engineers, accompanied by NEVD, to perform a survey of the manholes to be accessed by NEVD in order to install its own conduit, such survey to be conducted as early as Wednesday, June 9, but no later than Thursday, June 10
- immediately following the manhole survey, to fax a letter to NEVD which indicates that BA has authorized NEVD to access such manholes, so that NEVD can demonstrate such authority to the City of Worcester in connection with its application for a permit
- to identify the location of the manholes involved in pulling NEVD fiber from our switch on Washington Street to the BA switch on Chestnut Street by June 18, 1999

BA has failed to keep its commitments. First, on Thursday, June 10, we received a voicemail from BA indicating that the manhole survey would not take place as promised but would be postponed until Monday, June 14. According to BA such delay was necessary because a police detail was required and could not be arranged prior to that time. NEVD immediately called the Worcester Police Department and learned that such a detail was routine and could be assigned the following morning!

Following the completion of the manhole survey on Friday, June 11, NEVD attempted to contact BA to arrange for the receipt of the authorization letter that BA had agreed to promptly fax us. Such authorization letter is required by the City in order to obtain a permit to install conduit. When NEVD had not received such fax by late Friday afternoon, I called you to remind you of the letter and emphasized that NEVD intended to start work Monday morning. Unfortunately, as of Monday afternoon, we still have no letter and our efforts to install conduit continue to be delayed.

We need the letter now. Please call me at your earliest opportunity and let me know when NEVD can expect to receive it.

Sincerely,

Scott Sawyer
NEVD of Massachusetts, LLC
222 Richmond St., Suite 206
Providence, RI 02903
(401) 274-6383 ext. 377

cc: Jeff May, DTE